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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

REGGIE L. BISHOP,

Plaintiff and Appellant,

v.

ALCUE JONES,

Defendant and Respondent.

B205168

(Los Angeles County
Super. Ct. No. BC365831)

APPEAL from an order of the Superior Court of Los Angeles County,
Joanne O'Donnell, Judge. Affirmed.

Reggie L. Bishop, in pro. per., for Plaintiff and Appellant.

The Law Offices of Eric Ibisi and Eric Ibisi for Defendant and Respondent.

Plaintiff Reggie L. Bishop, in pro. per., appeals from the trial court's order to vacate default and default judgment entered in defendant Alcue Jones's favor on November 20, 2007.¹ Bishop contends (1) Jones failed to meet his burden of proof under Code of Civil Procedure section 473, subdivision (b),² (2) Jones failed to articulate a meritorious defense as required under section 473; (3) Jones waived his right to participate in this action when he submitted the matter on the court's tentative ruling on November 20, 2007, and (4) Jones could not move to vacate the clerk's default because the six-month statute of limitations had expired. We find the record inadequate and therefore affirm the trial court's order.

RELEVANT PROCEDURAL BACKGROUND

In his request for entry of default, Bishop stated he filed his complaint on February 6, 2007. The clerk's default was filed on May 2, 2007. Bishop obtained a court judgment by default against Jones for \$150,000, which was filed on August 24, 2007. Jones's answer and cross-complaint were filed on October 18, 2007.

The court's minutes of October 19, 2007 state the motion [of defendant in pro. per. Alcue Jones to vacate default judgment]³ was not timely served, but that Bishop had waived the defect by opposing the motion on the merits. The court found the motion was timely under section 473 because it was filed within one month of the default judgment.

¹ In his notice of appeal, Bishop stated that the order was entered on January 9, 2008. In fact, the trial court granted Jones's motion to vacate the default judgment on November 20, 2007. The court denied Bishop's motion for reconsideration on January 9, 2008. As Bishop states in his opening brief that "the trial court erred in granting the Respondent's Motion Vacating the Default Judgment based on legal technicalities[.]" it appears he meant to challenge the order of November 20, 2007, not the order denying reconsideration.

² Unless otherwise indicated, code references are to the California Code of Civil Procedure.

³ The motion is not part of the clerk's transcript.

The court found Jones's declaration⁴ defective because he did not "expressly state that he was not able to respond to the complaint because he was caring for his wife who is ill with cancer." In addition, Jones failed to attach a copy of his proposed answer and/or cross-complaint to the motion. The court continued the hearing to November 20th, giving Jones until October 26th to file and serve his additional documents and Bishop until November 15th to file and serve any response. Jones filed a supplemental declaration. Bishop does not appear to have filed anything.

On November 20, 2007, the trial court found Jones's supplemental declaration met the requirements of section 473, subdivision (b) and noted the filing and service of Jones's answer and cross-complaint on October 18, 2007. Finding that Bishop had made no showing of prejudice, the court ordered the August 24, 2007 default judgment vacated and set a case management conference for December 20, 2007.

Bishop filed an ex parte motion for reconsideration on November 26, 2007.⁵ Bishop argued that Jones's declaration was insufficient because he failed to offer medical evidence of Jones's statement that his wife's illness had consumed his time and attention and was responsible for his failure to respond to Bishop's complaint. Bishop further argued Jones failed to indicate he had a meritorious defense.

The trial court denied Bishop's motion for reconsideration on January 9, 2008. The court found Bishop had failed to timely object to Jones's supplemental declaration and failed to provide any grounds on which the trial court would have denied the motion to vacate the default judgment.

Bishop then filed this appeal.

⁴ The document is not part of the clerk's transcript.

⁵ He further lodged a demurrer to Jones's answer and cross-complaint and moved for an order striking the pleadings and quashing service of Jones's summons.

STANDARD OF REVIEW

We review a trial court ruling on a motion to vacate a judgment pursuant to section 473, subdivision (b) on the grounds of “mistake, inadvertence, surprise, or neglect” for an abuse of discretion. (*Zamora v. Clayborn Contracting Group, Inc.* (2002) 28 Cal.4th 249, 257.) The appropriate test for an abuse of discretion is “whether or not the trial court exceeded the bounds of reason, all of the circumstances before it being considered.” (*In re Marriage of Connolly* (1979) 23 Cal.3d 590, 598.) “[W]hen a party in default moves promptly to seek relief, very slight evidence is required to justify a trial court’s order setting aside a default.” (*Shamblin v. Brattain* (1988) 44 Cal.3d 474, 478.)

DISCUSSION

Appellate review begins with the presumption that an appealed judgment is correct. “All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown. . . .” (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564; see also *In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133.) To overcome this presumption, the appellant must provide an adequate appellate record demonstrating error. (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295-1296.) “[I]f the particular form of record appears to show *any* need for *speculation or inference* in determining whether error occurred, the record is *inadequate*.” (Eisenberg et al., Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2007) ¶ 4:43, p. 4-11.) If the record is inadequate, we affirm the appealed judgment. (*Estrada v. Ramirez* (1999) 71 Cal.App.4th 618, 620, fn. 1 [appellant bears burden of providing adequate record on appeal to demonstrate error; failure to do so “precludes an adequate review and results in affirmance of the trial court’s determination”].)

Here, Bishop seeks review of the trial court’s order granting Jones relief from default, but has failed to submit Jones’s request for such relief, most notably, Jones’s

motion to vacate the default judgment and any accompanying declarations or exhibits.⁶ Due to the limited record, we are unable to review the merits of the appeal.⁷ Bishop has thus failed to affirmatively demonstrate that the trial court erred in any respect.⁸

⁶ Bishop's Designation of Record on Appeal includes a "Motion to vacate Default Judgment dated 8/24/07." The default judgment was entered August 24, 2007. As best we can determine, the motion to vacate the default judgment was filed on September 25, 2007. Bishop did not designate any document filed that date to be included in the record on appeal.

⁷ Bishop requests that this court take judicial notice of a document entitled "Third-Party Claim of Geraldine Jones's Right to the Security Interest/or Right to Lien on the Levied Property Herein Pursuant to CCP Section 720.210, & 720.230," purportedly filed with the Los Angeles County Sheriff's Department on October 26, 2007. The request is unopposed and is granted accordingly. (Evid. Code, § 452, subd. (d).) As we are unable to review the merits of the appeal because Bishop failed to provide Jones's motion to vacate the default judgment, and because Bishop has failed to establish what, if any, relationship Mrs. Jones's third-party claim has to the motion to vacate the default judgment or even whether it was filed in the trial court, we do not consider the document further.

⁸ Wholly apart from the inadequate record, two of Bishop's contentions lack merit on their face. First, Bishop contends that by submitting on the court's tentative ruling on November 20, 2007, Jones waived any objection or right to participate in further proceedings. As a result, Bishop maintains, Jones effectively conceded that only the default judgment was vacated, not the default itself. In the November 20, 2007 order, however, the court expressly acknowledged that Jones had filed and served his answer and cross-complaint and had filed the proof of service with the court. Lest there be any question that the court vacated the default as well as the default judgment, the court corrected the November 20, 2007 order nunc pro tunc in its January 9, 2008 order "to reflect that both the default judgment and the default were vacated." We reject Bishop's contention to the contrary.

Accordingly, we must presume the order is correct and affirm it on that basis. (*In re Marriage of Arceneaux*, *supra*, 51 Cal.3d at p. 1133; *Denham v. Superior Court*, *supra*, 2 Cal.3d at p. 564.)

DISPOSITION

The order is affirmed. Respondent shall recover his costs of appeal.

NOT TO BE PUBLISHED

WEISBERG, J.*

We concur:

MALLANO, P.J.

ROTHSCHILD, J.

Second, Bishop contends that the court lacked jurisdiction to order relief from default because the six-month limitation period under section 473 had lapsed. Even without a proper record for us to review, this contention fails as well. “The general rule is that the six-month period within which to bring a motion to vacate under section 473 runs from the date of the default and not from the judgment taken thereafter. [Citations.]” (*Rutan v. Summit Sports, Inc.* (1985) 173 Cal.App.3d 965, 970.) Accepting Bishop’s premise that the period began to run when the clerk’s default was filed on May 2, 2007, and assuming that (according to the court’s November 20, 2007 order) Jones filed his motion to vacate the default on September 25, 2007, Jones acted well within the six-month period under section 473, subdivision (b). We reject Bishop’s statute of limitations argument.

*Retired Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.